

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

**CHRISTOPHER KNOTT, a
minor through his father and
natural guardian,**

Appellant,

v.

**VINCENT P. MECONI, in his
official capacity as Secretary of the
Delaware Department of Health
and Social Services,**

Appellee.

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) ID No. 06A-01-007 CLS
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Date Submitted: July 24, 2006
Date Decided: October 31, 2006

Upon Consideration of Appellee's Motion to Dismiss
GRANTED.

Mary Beth Musumeci, Esquire, Community Legal Aid Society, Inc.,
Wilmington, Delaware, Attorney for Appellant.

A. Ann Woolfolk, Esquire, Deputy Attorney General, Wilmington,
Delaware Attorney for Appellee.

SCOTT, J.

INTRODUCTION

Defendant Vincent P. Meconi (“Appellee”) brings this Motion to Dismiss before the Court in his official Capacity as Secretary of the Delaware Department of Health and Social Services (“DHSS”). Because the Court finds that Appellee is not an appropriate party to the appeal, the Motion to Dismiss is **GRANTED** with leave to refile against the proper party.

FACTS

Appellee’s Motion to Dismiss arises from a dispute over Medicaid coverage. Appellee serves as Secretary of DHSS which operated the Delaware Medical Assistance Program (“DMAP”)¹, Delaware’s Medicaid program. For part of the Medicaid operation, DHSS contracts with Delaware Physicians Care, Inc. (“DPCI”), a private contractor. DHSS pays DPCI a capitation rate for the care of Medicaid recipients and DPCI pays for each of the contractually agreed upon services.

On February 1, 2005, through his father Curtis Knott and his physicians, Christopher Knott (“Appellant”) applied to DPCI for payment to purchase a MOTomed Viva2 Therapy Apparatus (“Motomed”). Payment

¹ The Division of Medicaid and Medical Assistance (DMMA) officially activated on July 1, 2005. Prior to this date, Medicaid services, including DMAP, fell under the Division of Social Services (DSS).

for a Motomed is a Medicaid service included in the contract between DHSS and DPCI. As such, DPCI must pay for the Motomed if it is medically necessary and all other conditions for payment are met.

Federal Medicaid law provides that the federal government can only reimburse for medically necessary services. On April 5, 2005, DPCI, therefore, denied Appellant's application because it found that the Motomed was not medically necessary. On May 11, 2005, Christopher Knott appealed the decision, but DPCI upheld its denial. On June 10, 2005, Mr. Knott requested a fair hearing on the denial. DHSS provided the hearing officer for the hearing that convened on November 30, 2005.² DPCI and Mr. Knott both appeared at the hearing through counsel. On December 20, 2005, the hearing officer upheld DPCI's denial of payment for the Motomed.

In his Motion to Dismiss, Appellee Meconi contends that the hearing officer determined the issue of whether the Motomed was medically necessary. However, Appellant Knott contends that the hearing officer did not consider that issue, but instead, considered whether the Motomed was

² In his Motion to Dismiss, Appellee states that DHSS provided the hearing officer. However, this Court notes that §5304.3 of the DSSM Manual provides that DSS has jurisdiction for Medicaid Managed Cases. It states that the "decision of the DSS hearing officer is a final decision of the Department of Health and Social Services and is binding on the MCO".

Furthermore, the hearing transcript reveals the identity of the hearing officer. At the beginning of the hearing, he stated, "My name is Michael Steinberg. I am a contract Hearing Officer at the Division of Social Services." (DHSS Tr. (November 30, 2005) at 1.).

“not a covered service” under the Delaware Medicare program because it is home exercise equipment. The program’s guidelines categorically exclude coverage for home exercise equipment. Appellant finds this distinction important because items not covered by services under the Delaware Medicare program are not included in the capitation rate that DHSS pays to DPCI.

According to the published hearing decision, the hearing officer decided the issue of whether the Motomed “is home exercise equipment and therefore, fails to meet” the medical necessity guidelines³ devised by Medicaid.⁴ Denying Appellant’s request for coverage, the hearing officer found that, “the Motomed device is home exercise equipment and even when it provides some medical benefit it is not a covered service.”⁵ The hearing officer, thereby, sustained DPCI’s decision to deny authorization of the Motomed device.⁶

³ Medicaid’s Medical Necessity Guidelines provide in part that:

The device must “be the most appropriate care or service that can be safely and effectively provided to the beneficiary, and will not duplicate other services provided to the beneficiary and be the least costly, appropriate, available health service alternative, and will represent an effective and appropriate use of program funds.”

⁴ Del. Dept. of Health and Soc. Serv. Div. of Medicaid and Medical Assistance, H.R. Doc. No. 000069530, at 2 (2005).

⁵ *Id.* at 8.

⁶ *Id.*

Pursuant to 31 *Del. C.* §520⁷ and Super. Ct. Civ. R. 72, Christopher Knott appealed the hearing officer's decision to the Superior Court on January 13, 2006. In his appeal, Appellant named Vincent P. Mecconi, Secretary of DHSS, as the appellee and did not name DPCI in the appeal. Finally, Appellant served a Rule 72 Citation to Produce the Record upon the DHSS hearing officer.

On appeal, Appellant asks the following questions: 1) Did the Division of Medicaid and Medical Assistance fair hearing officer commit legal error by concluding that the Motomed is not a covered service under the Medicaid program?, and 2) Did the Division of Medicaid and Medical Assistance fair hearing officer commit legal error by refusing to consider relevant federal legal authority raised by Appellant at his hearing?

PARTIES' CONTENTIONS

Appellee argues that he is not a proper party to this appeal. According to Appellee, no federal or state statute or regulation makes him or DHSS a

⁷ 31 *Del. C.* §520 reads:

Any applicant for or recipient of public assistance benefits under this chapter or Chapter 6 of this title against whom an administrative hearing decision has been decided may appeal such decision to the Superior Court if the decision would result in financial harm to the appellant. The appeal shall be filed within 30 days of the day of the final administrative decision. The appeal shall be on the record without a trial de novo. The Court shall decide all relevant questions and all other matters involved, and shall sustain any factual findings of the administrative hearing decision that are supported by substantial evidence on the record as a whole. The notice of appeal and all other matters regulating the appeal shall be in the form and according to the procedure as shall be provided by the rules of the Superior Court.

party here. Appellee further contends that he has no stake in the outcome of the appeal. If the Court orders a reversal of DPCI's denial of payment for a Motomed, only DPCI may be required to pay for the Motomed. If the Court orders a remand to the hearing officer, only DPCI and Mr. Knott will participate on remand. As employer of the hearing officer, Appellee's "interest in the outcome of this appeal is comparable to the interest of a trial court in the appeal of its decisions."⁸

In response to these arguments, Appellant contends that Appellee is Delaware's single state Medicaid agency. As such, Appellee is responsible for ensuring that decisions about coverage of Medicaid services comply with federal and state law. Appellant also contends that DPCI's actions as the State's agent under contract are appropriately attributable to Appellee.

DISCUSSION

Pursuant to Superior Court Rule 25, "When an officer of the State of Delaware, county, city or other governmental agency sues or is sued in an official capacity, the officer may be described as a party by an official title rather than by name."⁹ Appellant, thereby, appropriately named Vincent P.

⁸ Appellee Mot. to Dismiss at 3.

⁹ Super. Ct. Civ. R. 25(d)(2).

Meconni in his official capacity as Secretary of the Delaware Department of Health and Social Services.

The single issue before this Court is whether the Delaware Department of Health and Social Services is a necessary and proper party to the appeal of a decision made by one of its hearing officers. Delaware case law does not provide the Court with any bright line rule as to whether an administrative agency can be named as a party on appeal.¹⁰ The Court in *Bureau for the Visually Impaired v. Lawrence* found that, “A review of the case law in this area reveals that authority to name a quasi-judicial agency as a party to the appeal may be construed either expressly or implicitly from the agency’s enabling statute.”¹¹

The facts of *Bureau for the Visually Impaired* bear similarity to the case at hand.¹² The Bureau of Visually Impaired filed a petition to terminate Gertrude Lawrence’s temporary disability benefits, claiming that she was physically able to return to work.¹³ After conducting a hearing on the petition, the Industrial Accident Board denied it.¹⁴ The Bureau subsequently named both the Industrial Accident Board and Ms. Lawrence as a party in

¹⁰ *Bureau for the Visually Impaired v. Lawrence*, 1998 Del. Super. LEXIS 441 at *3 (citing, *Liborio II v. Artesian Water Company, Inc.*, 621 A.2d 800, 803 (Del. Super. 1992)).

¹¹ *Id.* (citing, *Simpson v. Kennedy*, 327 A.2d 763, 766 (Del. Super. 1974)).

¹² 1998 Del. Super. LEXIS 441.

¹³ *Id.* at *2.

¹⁴ *Id.* at *2-3.

the appeal of this decision.¹⁵ The Industrial Accident Board filed a motion for the Court to dismiss it from the appeal.¹⁶

Following Delaware case law, the *Bureau for the Visually Impaired* Court first looked to the Industrial Accident Board's enabling statute to consider whether it explicitly authorized naming the agency as a party to the appeal.¹⁷ The Court conducted this analysis by comparing the Industrial Accident Board's enabling statute with the statute in *Simpson v. Kennedy*.¹⁸ It found that the statute in *Simpson* explicitly required the Attorney General to represent the Human Relations Commission.¹⁹ As such, the *Simpson* Court held the administrative agency in this matter as a necessary party to the appeal.²⁰ The *Bureau for the Visually Impaired* Court, therefore, looked to see whether the Industrial Accident Board's enabling statute explicitly mandated the Attorney General to represent the Board during the appeal

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 1998 Del. Super. LEXIS 441 at *4-7.

¹⁸ *Id.* (citing, *Simpson v. Kennedy*, 327 A.2d 763, 766 (Del. Super. 1974)). 6 Del. C §4611(b) provided in part:

The grounds of the appeal shall be specifically set forth in the notice of the appeal. Service of the notice of appeal upon any member of the Commission shall be deemed service upon the Commission. *The Commission shall be represented by the Attorney General.* The Commission shall cause to be filed forthwith a certified copy of its record in the proceedings. Unless otherwise ordered by the court, the filing of the notice of appeal shall act as a stay in the order appealed from until disposition of the appeal.

¹⁹ *Bureau for the Visually Impaired*, 1998 Del. Super. LEXIS 441 at *4-5.

²⁰ *Id.*

process.²¹ Because it did not, the Court made further inquiry as to whether the statute implicitly required the agency to be named in the appeal process.²²

In making this inquiry, the *Bureau for the Visually Impaired* Court assessed the quasi-judicial nature of the Industrial Accident Board by looking at various sections of the enabling statute.²³ The Court analyzed several different angles of the Board's functions.²⁴ On the whole, it essentially found that the Industrial Accident Board "acts as an adjudicatory body which decides disputes between litigants and whose involvement ceases when it issues a decision".²⁵ The Court, therefore, held that "it was improper for appellant to name the board as a party to the appeal".²⁶

Following the analysis of *Bureau for the Visually Impaired*, this Court first considers whether the Department of Health and Social Services' enabling statute explicitly authorizes naming the agency as a party to the appeal. The enabling statute reads:

²¹ *Id.* (citing 19 Del. C. §2349). This statute provided in part:

An award of the Board, in the absence of fraud, shall be final and conclusive between the parties, except as provided in § 2347 of this title, unless within 20 days after a copy thereof has been sent to the parties either party appeals to the Superior Court of the county in which the injury occurred or, if the injury occurred out of the State, to the Superior Court in and for the county in which the hearing was held.

²² *Bureau for the Visually Impaired*, 1998 Del. Super. LEXIS 441 at *7-8.

²³ 1998 Del. Super. LEXIS 441 at *6-8.

²⁴ *Id.* at *6-10.

²⁵ *Id.* at *10.

²⁶ *Id.*

Any and all rights of appeal now existing by law with respect to any act or acts constituting the exercise of any function or functions transferred to the Department or to any division or subdivision thereof shall continue to exist with respect to such act or acts as hereafter performed by the Department or by the division, subdivision or office to which such function is transferred and each such appeal shall be perfected in the manner heretofore provided by law.²⁷

Like the Industrial Accident Board's enabling statute, this statute does not explicitly mandate that the Attorney General represent DHSS on appeal.

The Court must, therefore, continue its analysis by assessing the quasi-judicial nature of DHSS by looking at various sections of the enabling statute

When reviewing various sections of the enabling statute, the Court finds that DHSS acts as an administrator and director as well as an adjudicatory body for the agencies below it. 29 *Del. C.* §7903(1) states that the "Secretary (Appellant-Meconi) may: (1) supervise, direct and account for the administration and operation of the Department, its divisions, subdivisions, offices, functions and employees".²⁸ DHSS, thereby, oversees 12 different departments²⁹, including the Division of Social Services (DSS)

²⁷ 29 *Del. C.* §7924.

²⁸ 29 *Del. C.* §7903(1).

²⁹ Delaware Health and Social Services oversees the: (1) Division of Social Services (DSS); (2) Division of Medicaid and Medical Assistance (DMMA); Division of Public Health (DPH); (3) Division of Management Services (DMS); (4) Division of Substance Abuse and Mental Health (DSAMH); (5) Division of Child Support Enforcement (DCSE); (6) Division of Services for Aging and Adults with Physical Disabilities (DSAAPD); (7) Division of Developmental Disabilities Services (DDS); (8) Division of

and the Division of Medicaid and Medical Assistance (DMMA)³⁰.

Furthermore, 29 *Del. C.* §7931(a) establishes “the Division of Medicaid and Medical Assistance under the direction and control of the Secretary of the Department of Health and Social Services.”

Finally, the enabling statute gives DHSS the ability to contract with a private contractor for the assistance of the Medicaid program. 29 *Del. C.*

§7903(8) states that the Secretary of DHSS may:

Make and enter into any and all contracts, agreements or stipulations, and retain, employ and contract for the services of private and public consultants, research and technical personnel and to *procure by contract... other services and facilities*, whenever the same shall be deemed by the Secretary necessary and desirable.³¹

DHSS, thereby, contracts with the Delaware Physicians Care, Inc, a private contractor, to carry out part of the Medicaid operation. DHSS pays DPCI a capitation rate for the care of Medicaid recipients and DPCI pays for each of the contractually agreed upon services.

While DHSS acts as an administrative body and director of these divisions, the Court finds that DHSS’ principle function here was that of an adjudicatory body. DHSS provided the hearing officer to resolve the dispute

Long Term care Residents Protection (DLTCRP); (9) Division of Public Health (DPH); (10) Office of the Chief Medical Examiner (DMMA); (11) Division for the Visually Impaired (DVI); (12) Division of State Service Centers (DSSC).

³⁰ DMMA officially activated on July 1, 2005. Prior to this date, Medicaid services and other assistance programs were under the Division of Social Services.

³¹ 29 *Del. C.* §7903(8).

between one of its contractors, DPCI, and Appellant Knott. The hearing officer served as a contract hearing officer for one of DHSS' many divisions, DSS. In fact, §5304.3 of the DSS Manual provides that the "decision of the DSS hearing officer is a final decision of the Department of Health and Social Services (DHSS) and is binding on the MCO". Hence, the hearing officer's decision was a final adjudicatory decision by DHSS in its oversight of the divisions.

This Court acknowledges that the commingling of roles "is often implicit in the practical functioning of administrative agencies which perform both investigative and fact finding functions."³² Moreover, "it is not unusual for an administrative agency to act as 'litigant, lawyer and judge in the initial determination of the matter before it (and to appear) before the reviewing court in support of its own decision'".³³ However, like the Court in *Bureau for the Visually Impaired*, the Court predominately recognizes the separate role of DHSS as a neutral arbitrator here. Appellant Meconi, in his official capacity as Secretary of DHSS, acted as the neutral arbitrator by providing a hearing officer for the November 30, 2005 hearing. Once DHSS provided the hearing officer to decide the dispute between DPCI and

³² *Blinder Robinson & Co. Inc. v. Bruton*, 552 A.2d 466, 472 (Del. 1989).

³³ *Id.* (citing, *Application of Wilmington Suburban Water Corp.*, 211 A.2d 602, 605 (Del. 1965)).

Appellant Knott, its involvement ceased in the case at hand. This role of a neutral arbitrator should not convert to one of a party on appeal.

CONCLUSION

Based on the foregoing, the Court finds that Appellee Meconi is not a proper party on appeal. Appellee's Motion to Dismiss the appeal is, therefore, **GRANTED**. However, Appellant Knott shall have thirty days from the date of this decision to add the proper party.

IT IS SO ORDERED.

Judge Calvin L. Scott, Jr.